

## CLARIFYING THE LAW RELATING TO THE GRANT OF CERTAIN PUBLIC LANDS TO THE STATES FOR SCHOOL PURPOSES

JUNE 8, 1956.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. ENGLE, from the Committee on Interior and Insular Affairs, sub-  
mitted the following

### REPORT

[To accompany H. R. 11127]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 11127) to clarify the law relating to the grant of certain public lands to the States for school purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF H. R. 11127

If enacted, H. R. 11127 would correct a technical defect contained in the wording of a 1954 act of Congress which provides that title to certain school lands shall vest in the States as provided in the act of January 25, 1927, as amended (43 U. S. C., sec. 870), notwithstanding any Federal leases which may be outstanding at the time the lands are surveyed.

No appropriation of Federal funds is required by this legislation.

#### EXPLANATION OF THE BILL

The act of January 25, 1927, as amended by the act of May 2, 1932, extended the grant of school sections to the States to embrace lands mineral in character; however, lands covered by leases or permits, or applications therefor, were excluded.

The act of April 22, 1954 (68 Stat. 57), amended the 1927 act so as to provide that an outstanding lease on a "numbered mineral section" shall not prevent the grant of that section to a State, and that any "numbered mineral section" which would have previously passed

to a State except for the presence of an outstanding lease, shall be granted to that State.

It is the opinion of the Solicitor of the Department of the Interior that the term "numbered mineral section," as used in the 1954 act, does not permit title to numbered school sections to be passed to the State where such lands are included in noncompetitive mineral leases or prospecting permits unless they are subsequently determined to be mineral in character either as the result of production therefrom or from land on the same geological structure or of their inclusion in the known geological structure of a producing field as defined by the Geological Survey. Thus, due to the technical defect referred to in the 1954 act, a State may obtain title to school section lands known to be valuable for minerals and included in mineral leases but may not obtain title to school-section lands included in mineral leases and not known to be valuable for minerals.

In short, while it may be argued from the committee and departmental report accompanying the bill which became the act of April 22, 1954, that the Congress intended that the broader grant (i. e., school sections known to be mineral in character and in fact subject to a mineral lease) carry with it the lesser grant (i. e., school sections not known to be mineral in character but subject to a mineral lease or prospecting permit), the committee agrees that a plain reading of the existing law negates that intent.

If enacted, H. R. 11127, introduced by Representative Dawson of Utah, would amend section 1 (d) of the 1927 act in order that the provisions of the section will conform to those intended by the Congress when it passed the 1954 act.

#### DEPARTMENTAL REPORT

The executive communication from the Department of the Interior, wherein it was recommended that this measure be enacted, is set forth below. The executive communication points out that the Bureau of the Budget informed the Department that this legislation is in accord with the program of the President.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D. C., May 9, 1956.

Hon. SAM RAYBURN,  
*Speaker of the House of Representatives,*  
Washington, D. C.

MY DEAR MR. SPEAKER: Enclosed is a draft of a proposed bill to clarify the law relating to the grant of certain public lands to the States for school purposes.

We suggest that the proposed bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The act of January 25, 1927, as amended by the act of May 2, 1932 (43 U. S. C., secs. 870-871), extended the grant of school sections to the States to embrace lands mineral in character; however, lands covered by leases or permits, or applications therefor, were excluded. A mineral lease may be issued on unsurveyed land, and, since the right of a State to a school section does not attach to that section until after the completion of the survey, a State's right to a section subject,

at the time of survey, to a mineral lease did not attach. Because of the constant increase in the amount of land subject to mineral leases and the slow progress of the land surveys the grant of public lands to the States was thus rendered ineffective. Under these circumstances, the act of April 22, 1954 (68 Stat. 57) was enacted, amending the 1927 act. It provides that an outstanding lease on a "numbered mineral section" shall not prevent the grant of that section to a State, and that any "numbered mineral section" which would have previously passed to a State except for the presence of an outstanding lease shall be granted to that State.

Although we endorsed the 1954 act, and still strongly support its principles, we now find that its text is inadequate. This inadequacy stems from the provision permitting the grant to States of "numbered mineral sections," even when subject to a lease; no provision is made for the grant of any other type of section under lease. It was assumed, we presume, that any section under a mineral lease is ipso facto considered a "mineral section." This is, however, not a correct statement of the law, at least as it has been interpreted in the decisions of this Department. It is true that in early decisions of this Department there was some indication that the existence of a noncompetitive oil and gas lease upon it made a section mineral in character. See *William R. Rrennan*, 48 L. D. 108 (1921); *Pace v. Carstarphen et al.*, 50 L. D. 369 (1924). However, in *Gross v. Nowell*, A-10786 (August 30, 1927), it was stated, on page 9, that "The Department is unable to sustain the view of the appellant that a prospecting permit is prima facie evidence that the lands covered thereby are valuable for minerals." That case involved a prospecting permit rather than a non-competitive lease, but the same reasoning would seem to be applicable in each case and was followed in *Carl O. Olsen*, A-26432 (October 7, 1952). In the Olsen case, it was held that an oil and gas lease remained unaffected by a finding that the land upon which it had been issued was not valuable for oil and gas. When these cases are considered, the desirability of amending the 1954 act becomes apparent, since, under its present provisions, while the title of a State may attach to nonmineral lands not under lease and to mineral lands under lease, its right to title may not attach to nonmineral lands under mineral lease. This illogical result was clearly not intended, and the enclosed proposed bill would amend the 1954 act to conform to its original intention.

A second respect in which the 1954 act is inadequate is that it is applicable solely to lands under lease; no provision is made with respect to lands covered by permits. Under the Mineral Leasing Act prospecting permits are issued in the case of certain minerals to foster the prospecting of unproved areas. If a discovery is made, the permittee is entitled to a preference right lease. We believe that the 1954 act should be equally applicable to lands under lease and lands under permit. Though such a result might be attained by construction of the statute in its present form, we would prefer to see the 1954 act amended as provided in the enclosed proposed bill.

The Bureau of the Budget has informed me that the proposed bill is in accord with the program of the President.

Sincerely yours,

WESLEY A. D'EWART,  
Assistant Secretary of the Interior.

A BILL To clarify the law relating to the grant of certain public lands to the States for school purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That subsection (d) of the first section of the Act of January 25, 1927 (43 U. S. C., sec. 870) as added by the Act of April 22, 1954 (68 Stat. 57, 43 U. S. C., sec. 870), is amended to read as follows:

"(d) (1) Notwithstanding subsection (c), the fact that there is outstanding on any numbered school section, whether or not mineral in character, at the time of its survey a mineral lease or leases entered into by the United States, or an application therefor, shall not prevent the grant of such numbered school section to the State concerned as provided by this Act.

"(2) Any such numbered school section which has been surveyed prior to the date of approval of this amendment, and which has not been granted to the State concerned solely by reason of the fact that there was outstanding on it at the time of the survey a mineral lease or leases entered into by the United States, or an application therefor, is hereby granted by the United States to such State under this section as if it had not been so leased; and the State shall succeed to the position of the United States as lessor under such lease or leases.

"(3) Any such numbered school section which is surveyed on or after the date of approval of this amendment and on which there is outstanding at the time of such survey a mineral lease or leases entered into by the United States, shall (unless excluded from the provisions of this section by subsection (c) for a reason other than the existence of an outstanding lease) be granted to the State concerned immediately upon completion of such survey; and the State shall succeed to the position of the United States as lessor under such lease or leases.

"(4) The Secretary of the Interior shall, upon application by a State, issue patents to the State for the lands granted by this Act, in accordance with the Act of June 12, 1934 (48 Stat. 1185, 43 U. S. C. sec. 871a). Such patent shall, if the lease is then outstanding, include a statement that the State succeeded to the position of the United States as lessor at the time the title vested in the State.

"(5) Where at the time rents, royalties, and bonuses accrue the lands or deposits covered by a single lease are owned in part by the State and in part by the United States, the rents, royalties, and bonuses shall be allocated between them in proportion to the acreage in said lease owned by each.

"(6) As used in this subsection, 'lease' includes 'permit' and 'lessor' includes 'grantor'."

The Committee on Interior and Insular Affairs recommends the enactment of H. R. 11127.



## CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 1 OF THE ACT OF JANUARY 25, 1927 (44 STAT. 1026; 43 U. S. C. SEC. 870) AS AMENDED

Subject to the provisions of subsections (a)—(c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools, be and they are, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(a) The grant of numbered mineral sections under this section shall be of the same effect as prior grants for the numbered nonmineral sections, and titles to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

(b) The additional grant made by this section is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall hereafter be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands not heretofore disposed of by the State shall be subject to lease by the State as the State legislature may direct, the proceeds and rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(c) Except as provided in subsection (d), any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes, or included in any pending suit or proceeding in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such reservation, application, claim, or right is extinguished, relinquished, or canceled, and all lands in the Territory of Alaska, are excluded from the provisions of this section.

(d) (1) Notwithstanding subsection (c), the fact that there is outstanding on any numbered [mineral section] *school section, whether or not mineral in character*, at the time of its survey a *mineral* lease or leases entered into by the United States, or an application therefor, shall not prevent the grant of such numbered [mineral] *school section* to the State concerned as provided [in] *by* this Act.

(2) Any *such* numbered [mineral] school section which has been surveyed prior to the date of [the enactment of this subsection,] *approval of this amendment*, and which has not been granted to the State concerned solely by reason of the fact that there was outstanding on it at the time of the survey a *mineral* lease or leases entered into by the United States, or an application therefor, is hereby granted by the United States to such State under this section as if it had not been so leased; and the State shall succeed to the position of the United States as lessor under such lease or leases.

(3) Any *such* numbered [mineral] school section which is surveyed on or after the date of [the enactment of this subsection,] *approval of this amendment* and on which there is outstanding at the time of such survey a *mineral* lease or leases entered into by the United States, shall (unless excluded from the provisions of this section by subsection (c) for a reason other than the existence of an outstanding lease) be granted to the State concerned immediately upon completion of such survey; and the State shall succeed to the position of the United States as lessor under such lease or leases.

(4) The Secretary of the Interior shall, upon application by a State, issue patents to the State for the lands granted by this Act, in accordance with the Act of June 12, 1934 (48 Stat. 1185, 43 U. S. C. 871a). Such patent [shall] *shall, if the lease is then outstanding*, include a statement that the State succeeded to the position of the United States as lessor at the time the title vested in the State.

(5) Where [.] at the time rents, royalties, and bonuses accrue [.] the lands or deposits covered by a single lease are owned in part by the State and in part by the United States, the rents, royalties, and bonuses shall be allocated between them in proportion to the acreage in said lease owned by each.

(6) As used in this subsection, "lease" includes "permit" and "lessor" includes "grantor".

